IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14628 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIRJIBHAI M. CHAVDA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR JAL SOLI UNWALA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.
MR PV HATHI for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 16/07/2007

ORAL JUDGMENT

The petitioner-Shri Virjibhai M. Chavda is before this Court being aggrieved by the impugned order dated

03.03.2007 passed by respondent no.3-District Development Officer, Jamnagar, which is at Annexure 'J' to this petition and order dated 19.05.2007 passed by respondent no.2-Development Commissioner, Gandhinagar, which is at Annexure 'L' to the petition. The petitioner was the elected member of the Taluka Panchayat, Jam Jodhpur. He was served with the Show Cause Notice dated 22.01.2007 setting out three acts of misconduct in the said notice. He was granted time to file reply to the same within seven days. Hearing was fixed on 31.01.2007.

The petitioner filed reply on 29.01.2007 setting out the explanation to the misconduct alleged against him in the notice. As there was a meeting of General Body of the Taluka Panchayat, Jam Jodhpur on 29.01.2007 the petitioner was granted another date of hearing on 26.02.2007.

2. Before that date could reach there was 'No Confidence Motion' moved in the General Meeting of 12.02.2007 and that 'No Confidence Motion' was passed and the petitioner was removed from the post of the President of the Taluka Panchayat.

3. For filling up vacant post of the President of the Taluka Panchayat, election was declared on 22.02.2007 and in response to the said declaration of election for the post of President of the Taluka Panchayat, the petitioner wanted to file his nomination which he did on 03.03.2007. But on the same day, i.e. 03.03.2007 the petitioner was served with the order passed by the District Development Officer removing him from the post of member of the Taluka Panchayat. Being aggrieved of that he filed appeal before the Development Commissioner, respondent no.2 herein, who dismissed the appeal. Against that the petitioner is before this Court.

4. Mr.Unwala, learned advocate for the petitioner vehemently submitted that the authorities have erred in passing the order of removal of the petitioner as member of the Taluka Panchayat, because the misconduct alleged against the petitioner was in the capacity of President and therefore, he could not have removed from the membership of the Taluka Panchayat. In this regard he relied upon section 71 of the Panchayats

Act, 1993. Section 71 pertains to removal from office. The said section is reproduced hereunder for ready perusal.

> “71. Removal from office - (1) The competent authority may remove from office any member of a Panchayat or any President or Vice President thereof after giving him an opportunity of being heard and giving due notice in that behalf to the Panchayat and after such inquiry as it deems necessary, if such member, President or Vice President has been guilty or (sic.) misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties under this Act. The President or as the case may be, the Vice President so removed may at the discretion of the competent authority also be removed from the membership of the Panchayat. (emphasis supplied)

5. Learned advocate submitted that assuming for the sake of argument that he could have been removed from the membership of the Panchayat for the same misdeeds, then also a separate notice of the intention of the authorities of removing him from the membership of the

Panchayat was required and as no such notice is given to the petitioner it amounts to violation of principles of natural justice and action is required to be quashed and set aside by this Court.

The Court finds no substance in the submission of the learned advocate for the petitioner because the section provides that it is in the discretion of the authorities, that the person who may be the President or Vice President, **can also be removed from the membership of the Panchayat**. In the present case the Development Commissioner looking to the nature of the misconduct and having found them to be grave enough to remove the petitioner even from the membership of the Panchayat has dismissed the appeal of the petitioner.

6. The learned advocate for the petitioner relied upon a decision of Division Bench of this Court in the matter of **Chimanbhai R. Patel Vs. Anand Municipality**, reported in 1983(1) GLR 67.

The said decision has no application to the facts of the present case because the section which falls for

consideration of the Division Bench was section 37 of the Gujarat Municipalities Act (XXXIV of 1964) is not para materia to section 71 of the Gujarat Panchayats Act, 1993.

7. The learned advocate also relied upon yet another decision of Division Bench of this Court in the matter of **Akbarali Kasamali Ravjani Vs. N.G. Pandya, District Development Officer**, reported in 1973 GLR 287. In this decision section 49 of the Gujarat Panchayats Act (VI of 1962) was under consideration.

The facts of the case before the Division Bench were different than the facts of the present case. There, the misconduct alleged against the petitioner of that case was that the petitioner in his capacity as Chairman did not implement the order of the District Panchayat. Such misconduct could be committed only in the capacity of Chairman and not in the capacity of member of Panchayat. In that view of the matter this Court is of the opinion that the said decision is of no help to the petitioner.

8. Learned advocate for the petitioner submitted that there was no inquiry conducted because before personal haring could commence there was 'No Confidence Motion' and the petitioner was removed as President. Therefore, hearing could not take place.

The fact that the notice was given setting out the misconduct in the notice in detail, to which a detailed reply was given, which was considered by the authority, in the opinion of this Court there is sufficient compliance of the principles of natural justice. Hence the submission that there was no compliance of the principles of natural justice is not accepted.

9. In the result the petition is dismissed. Notice is discharged. No order as to costs.

(RAVI R. TRIPATHI, J.)

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